

**IOWA RACING AND GAMING COMMISSION
MINUTES
JUNE 4, 2015**

The Iowa Racing and Gaming Commission (IRGC) met at the Hard Rock Hotel and Casino in Sioux City, on June 4, 2015. Commission members present were Jeff Lamberti, Chair; Carl Heinrich, Vice Chair; and member Kris Kramer. Commissioner Rich Arnold participated via conference phone. Commissioner Dolores Mertz was absent.

Chair Lamberti called the meeting to order at 8:30 AM and requested a motion to approve the agenda with the following change: item 10G(3) is being removed as it has been approved previously. Commissioner Kramer so moved. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti moved to the Welcome. Mayor Bob Scott stated he was happy to have everyone here; that he is proud of the community. He noted it was not an easy path to get to where they are at, but having the Hard Rock Hotel & Casino downtown is helping to revitalize the downtown area. Mayor Scott stated the facility has a good operator who is supportive of proposed projects. He thanked the Commission for everything they have done.

Mark Monson, President of Missouri River Historical Development, stated the Warner group is great to work with; and the facility provides a food and entertainment venue for the entire region. He noted current board members will start rotating off at the end of the year and that three new members, who were recently selected, will start the background process. He thanked the Commission for coming to town.

Bill Warner, President of SCE Partners, LLC, also thanked the Commission for coming to town and for the opportunity to build the property and become a part of Sioux City. He stated they are looking forward to being in the community for a long time.

Chair Lamberti stated the Commission was happy to be in Sioux City. He indicated this was his first time seeing the facility and was very impressed; that it is everything the Commission hoped it would be.

Chair Lamberti moved to the approval of the minutes from the April 16, 2015 Commission meeting. Commissioner Kramer moved to approve the minutes as submitted. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Brian Ohorilko, Administrator of IRGC, for announcements. Mr. Ohorilko provided the following information regarding upcoming Commission meetings:

- July 9, 2015 – Prairie Meadows Racetrack & Casino, Altoona, IA (Submissions due by June 24, 2015)
- July 29, 2015 – Prairie Meadows Racetrack & Casino, Altoona, IA (Public Hearing)

- August 20, 2015 – Riverside Casino & Golf Resort, Riverside, IA (Submissions due by August 6, 2015)
- September 24, 2015 – Mystique Casino, Dubuque, IA (Submissions due by September 10, 2015)

Mr. Ohorilko recognized Pam Oliver and Dan Thurman, IRGC Gaming Representatives assigned to the Hard Rock Hotel and Casino, and thanked them for their work on behalf of the Commission.

Chair Lamberti moved to the rules before the Commission under Notice of Intended Action, and called on Mr. Ohorilko. Mr. Ohorilko advised these are the rules drafted by Commission staff with regard to the greyhound racing cessation fund. He stated the hearing on July 29th is a special meeting to receive public comment on the Greyhound Cessation proposed rules prior to them becoming final. He noted the hearing would start at 8:30 AM at Prairie Meadows Racetrack & Casino. He requested the Commission move forward with the Notice of Intended Action.

Chair Lamberti requested a motion regarding the proposed rules. Commissioner Heinrich moved to approve the rules as submitted under Notice of Intended Action. Commission Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Caesar's Entertainment Corporation for an update on the bankruptcy proceedings. Tina Eick, legal counsel, noted Caesar's Entertainment Operating Company, Inc. and related debtors filed for voluntary bankruptcy on January 15, 2015 and the proceedings are going forward in the Bankruptcy Court in Chicago. She advised the company continues to have sufficient cash on hand to meet its obligations. Ms. Eick stated the bankruptcy proceedings have not interrupted operations; that the restructuring is only intended to deleverage the company's balance sheet and not impact the day-to-day business operations. The deadline for general creditors to file claims passed on May 26th; government entities have until July 14th to file their claims. She advised the Chapter 11 plan and related disclosure statement filed on March 2nd is still pending while the company pursues the reorganization and continues to build consensus among its stakeholders. Ms. Eick stated the Restructuring Support Agreement entered into with certain senior creditors prior to commencing the bankruptcy case remains in place. She advised the company is continuing to work with other creditors to build consensus in order to exit bankruptcy successfully and as quickly as possible. An Omnibus hearing was held on May 27th and additional hearings are scheduled for June 22nd, August 19th and September 28th.

Chair Lamberti called on Isle of Capri Casinos, Inc. regarding their shelf application for approval of debt financing. Elizabeth Tranchina, Vice President of Legal Affairs, requested approval of the shelf application for debt refinancing pursuant to Section 5.4(20) of the Commission's administrative rules. She requested the approval for three years, noting the funds would be utilized for, but not limited to, capital expenditures, working capital and refinancing current indebtedness.

Hearing no comments or questions for Ms. Tranchina, Chair Lamberti requested a motion. Commissioner Arnold moved to approve the shelf application for debt financing as submitted by Isle of Capri Casinos, Inc. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Riverboat Development Authority (RDA) and Rhythm City Casino, LLC d/b/a Rhythm City Casino (RC). Dan Kehl, Chief Executive Officer, advised the \$110 million project is progressing nicely; the extension to Elmore Street is almost complete and groundbreaking is scheduled for 4:00 PM this afternoon pending the approval of all agenda items. He introduced Mo Hyder, General Manager; Randy Rathje, President of RDA, and Tom Hoskins, design team lead for the facility. Mr. Kehl turned the floor over to Mr. Hoskins.

Mr. Hoskins stated the colors and curves in the facility reflect the Mississippi River and its banks. There will be a LED light feature to the right of the porte-cochere that invites guests as they drive up to the facility. The property will have 2,000 parking spaces. He stated the main organizing element is the Grand Hall, from which the gaming floor, restaurants, events center, buffet and hotel branch off. The casino will be two-thirds smoking and one-third non-smoking. Mr. Hoskins stated there will be under-floor duct work that will clean the air to make the facility as clean as possible. The show lounge, inspired by Urban Beat, uses blues and greens; and can be seen and heard from the gaming floor, allowing individuals on the gaming floor to be involved in the entertainment. The High Limit area features bold geometry and bright colors, and has a small lounge and bar. The feature bar is shaped like a grand piano. The sports lounge utilizes multiple types of seating and includes a fire pit area with lighting, but also includes typical sports bar elements. Mr. Hoskins advised the buffet uses a lot of wood in the entry, and light greens and woods in the interior. He stated the buffet was designed to showcase the food being served in the buffet. The event center can hold up to 1,500 people, but can also be broken up into small meeting rooms. The resort shop will serve coffee, as well as the other typical elements. The spa uses water and curved shapes and forms to invite guests into the spa. Mr. Hoskins stated the crown jewel of the property is Ruthie's, which will be located on top of the hotel and will provide a 180 degree view of the surrounding landscape. There will be a circular bar with a twinkling light ceiling. There will be drapes to help separate the eating areas.

Mr. Hyder introduced Mr. Rathje, who noted it has been a long journey to reach this point, but it has been worth the wait. He stated RDA is very happy with their new partner. He advised the project is becoming an economic engine for the community; noting that a new Chevy dealership will be built along the Elmore corridor. There is also the potential for other big box businesses to move to the area. Mr. Rathje stated RDA and Rhythm City are not abandoning the river; the City of Davenport is anxious to get the riverfront back. They have signed an agreement with a vendor to provide river cruises that will draw approximately 13,000 people to the area. Mr. Rathje stated RDA is excited about the project and is anxious for its completion next spring. He requested approval to convert RDA's license to conduct gambling games on an excursion boat to a license to conduct gambling games in a gambling structure.

Mr. Hyder advised approximately 75% of the contracts listed have been awarded, and 90% were awarded to Iowa vendors. Mr. Hyder requested approval of all agenda items.

Chair Lamberti stated the Commission would combine items 8A and B, which request approval of construction of the land-based casino and the request to convert the license to a land-based facility. He requested a motion. Commissioner Heinrich moved to approve the request of RDA to convert the license to authorize the conducting of gambling games on a gambling structure upon completion of the construction, and approve the construction as proposed by Rhythm City Casino, LLC. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti stated the Commission is anxious to see this project start; it is consistent with some of the things the Commission has been trying to do over the past few years to enhance the gaming experience as well as the entertainment experience.

Mr. Hyder submitted the following contracts for Commission approval:

- Architectural Southwest Stone Co., LLC – Construction – Tile
- Baxter Construction Company, LLC – Pre-Construction and Construction Manager
- Brockway Mechanical and Roofing Co. – Construction – HVAC
- Brockway Mechanical and Roofing Co. – Construction – Metal Wall Panels
- Brockway Mechanical and Roofing Co. – Construction – Roofing
- Doors, Inc. – Construction – Doors, Frames, Hardware
- Harger's Acoustics, Inc. – Construction – ACT
- Industrial Steel Erection – Construction – Steel Erection, Masonry
- JP Phillips, Inc. – Construction - EFIS
- Legacy Corporation of Illinois – Construction – Site Utilities
- McCarthy Improvement Company – Construction – Hotel Tower Foundation/PT Slabs
- McClure Engineering Associates, Inc. – Engineer
- Midwestern Mechanical, Inc. – Construction – Fire Suppression
- Millenium Concrete – Construction – Foundations & Building Concrete
- Structural Steel Corp. of Iowa – Construction – Steel Fabrication
- Swanson & Youngdale, Inc. – Construction – Painting
- Tri-City Electric Company – Construction – Electrical, Low Voltage

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by RC. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti called on Washington County Casino Resort (WCCR)/Lyon County Resort & Casino, LLC (LCRC)/Scott County Casino, LLC (SCC). Dan Kehl and Ken Bonnet, Chief Executive Officer and Chief Financial Officer respectively, were present to address the various agenda items. Mr. Kehl noted it has been approximately 10 years since Riverside opened, five years since Grand Falls received a license and the purchase of Rhythm City a year ago. A decision was made to consolidate operations into one holding company, which will diversify the revenue stream for all of the unitholders, provide greater stability to the businesses, help mitigate competitive pressures, create favorable debt terms with the multi-company properties with their lenders, provide on-going cash generation to help support the Rhythm City

construction, provide future investment opportunities for the Iowa investors, and provide an economy of scale by pooling purchases for the facilities. The company will also receive a 25-30% reduction in premiums for their PNI insurance by combining the three companies. Mr. Kehl advised the three entities will have access to a single database with 650,000 members, which will enable the facilities to cross-market. This process will also allow for management continuity and long-term planning for management succession.

Mr. Kehl stated the companies were set up through an Iowa intrastate offering, which sets forth specific standards and guidelines that have to be met that could have triggered SEC filings. He advised they did not see any need to be an SEC company, so the following ownership structure was developed for Elite Casino Resorts, LLC: WCCR will own 54.74%; LCRC will own 27.94%; and SCC will own 17.32%. Elite Casino Resorts will own the operating companies: Riverside Casino & Resort, LLC; Grand Falls Casino Resort, LLC and Rhythm City Casino, LLC. Mr. Kehl advised that management had met with all of the unitholders, and all have voted in favor of proceeding with the consolidation. The votes were as follows:

- WCCR – 87% in Favor, Less than 3% Opposed; 10% Not Voted
- GFCR – 89% in Favor, Less than 3% Opposed; Approximately 10% Not Voted
- SCC – 99% in Favor
- Catfish Bend Riverside – 76% Approved; 3% Opposed

Mr. Kehl stated the company obtained a third-party fairness opinion from Duff & Phillips. The opinion stated the values set forth were within an appropriate range. The current board of directors, management and operating licenses will remain in place at the property level. Operating agreements with the non-profit operators will also remain in place.

Mr. Kehl turned the floor over to Mr. Bonnet to discuss the financial aspects of the transaction. Mr. Bonnet stated the company currently has a line of credit with Wells Fargo for a five-year commitment for a \$220,000,000 term loan; \$145 million will be drawn at close and the remaining \$75 million will be drawn as needed as construction of the land-based facility progresses. There will also be a \$15 million revolver in the event additional funding is needed. During the construction period, the loan will be an interest only for six months. The first payment will be due approximately six months after the property opens. The interest rate will be 3.25% or LIBOR or around 3.75%. The initial principal payments will be based on 7½% of the outstanding balance to be paid annually. The \$145 million loan will be used to repay the debt for Riverside, Grand Falls and Rhythm City, and \$20 million will be used to repurchase units and/or a distribution. Mr. Bonnet stated that unitholders who do not like this concept will be given an opportunity to get out of their investment, which was part of the third party opinion related to the valuation of shares. The other part of the initial funding is to pay the expenses related to the transaction – legal, title, appraisals, Wells Fargo, and the construction guarantee put in place for Wells Fargo to provide the funding.

Chair Lamberti called for any questions. He asked if there is a specific period of time in which the unitholders would need to exercise their option to sell their shares back to the company. Mr. Bonnet advised the letters were sent approximately two and a half weeks ago, and a response is

due by June 5th. Chair Lamberti asked if there have been any requests to date. Mr. Bonnet indicated less than eighteen at each location.

Chair Lamberti thanked Mr. Kehl and Mr. Bonnet for providing information on the transaction prior to today's meeting, and providing an opportunity to ask questions and follow the process. He stated that agenda items A-G are requests for approval of various agreements and amendments relating to the consolidation, whereas item H relates to the financing. Chair Lamberti stated the motion for items 9A-9G could be combined, and requested a motion. Commissioner Kramer moved to:

- A. Approve the Agreement and Plan of Consolidation by and among Washington County Casino Resort, LLC, Lyon County Resort & Casino, LLC, and Scott County Casino, LLC.
- B. Approve the Operating Agreement for Elite Casino Resorts, LLC.
- C. Approve the Amendment to the Operating Agreement of Washington County Casino Resort, LLC concerning the election of members of Elite Casino Resorts, LLC's board of directors.
- D. Approve the Amendment to the Operating Agreement of Lyon County Resort & Casino, LLC concerning the election of members of Elite Casino Resorts, LLC's board of directors.
- E. Approve the Amendment to the Operating Agreement of Scott County Casino, LLC concerning the election of members of Elite Casino Resorts, LLC's board of directors.
- F. Approve the Amendment to the Management Agreement between Kehl Management-Lyon County, LLC and Scott County Casino, LLC.
- G. Approve the Amended and Restated Operating Agreement for Riverside Casino & Golf Resort, LLC.

Mr. Bonnet advised Item F should state Kehl Management and Scott County Casino, LLC. Chair Lamberti stated his understanding was that Item F should read "Kehl Management-Scott County". He asked Commissioner Kramer if she accepted the amendment to her motion. She answered in the affirmative.

Commissioner Heinrich seconded the motion.

Chair Lamberti noted this is a complex transaction, but feels it is clear as to what Mr. Kehl is trying to accomplish. Hearing no further comments or questions, he requested a vote. The motion carried unanimously.

Chair Lamberti requested a motion on 9H which deals with the financial aspects of the above transaction. Commissioner Heinrich moved to approve the Credit Agreement and all ancillary agreements, including, among others, any Mortgages, Fixture Filings, Security Agreements, Preferred Ship Mortgages, Guaranty Agreements, and Promissory Notes, by and among Elite Casino Resorts, LLC, Riverside Casino & Golf Resort, LLC, Grand Falls Casino Resort, LLC, and Rhythm City Casino, LLC ("Borrowers"), Washington County Casino Resort, LLC, Lyon County Resort & Casino, LLC and Scott County Casino, LLC ("Guarantors"), and Wells Fargo

Bank, National Association, and other lenders whereby the Borrowers will borrow up to \$235,000,000 to refinance existing indebtedness, provide funds for the construction of the land-based Rhythm City Casino, and other purposes.

Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti moved to the contract approval portion of the agenda and called on IOC Black Hawk County, Inc. d/b/a Isle Casino Hotel Waterloo (IOCW). Grant Gubbrud, Senior Director of Finance, presented the following contracts for Commission approval:

- Ainsworth Game Technology, Inc. – Purchase Slot Machines
- Aruze Gaming America, Inc. – Purchase of Slot Machines

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by IOCW. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Catfish Bend Casinos II, LLC d/b/a Catfish Bend Casino (CBC). Rob Higgins, General Manager, presented the following contracts for Commission approval:

- Josh Jones – Sale of Catfish Bend Casino's riverboat through a broker, Pinnacle Marine
- Sunflower Enterprises, Inc. – Sale of the Catfish Bend Casino's Riverboat

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by CBC. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Diamond Jo Worth, LLC d/b/a Diamond Jo Worth (DJW). Kim Pang, General Manager, presented the following contracts for Commission approval:

- Aruze Gaming America, Inc. – Purchase and Lease of Slot Machines, Conversions and Parts
- Farner Bocken – Convenience Store and Food Service Distributor

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by DJW. Commissioner Arnold seconded the motion, which carried unanimously.

Chair Lamberti called on Diamond Jo Casino, LLC d/b/a Diamond Jo Casino (DJ). Wendy Runde, General Manager, presented the following contracts for Commission approval:

- Aruze Gaming America, Inc. – Purchase 6 Slot Machines and Future Lease of Slot Machines
- Holiday Inn Dubuque – Hotel Rooms for Casino Guests

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by DJ. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Wild Rose Clinton, L.L.C. d/b/a Wild Rose Clinton (WRC). Rick Gilson, Director of Regulatory Compliance for Wild Rose Entertainment, submitted the following contracts for Commission approval:

- IGT – Purchase of 12 New Slot Machines with a Trade of 12 Older Machines
- Bally – Purchase of 6 New Slot Machines
- Northwest Bank – Employee/Employer 401K Annual Contributions
- ADP – Payroll/HR Services
- Ticket Force – Concert Venue POS System
- Clinton LumberKings Baseball Club – Advertising Score Board

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by WRC. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Wild Rose Emmetsburg, L.L.C. d/b/a Wild Rose Emmetsburg (WRE). Mr. Gilson presented the following contracts for Commission approval:

- Tech Art – Lease of Peakers for Blackjack Tables
- Northwest Bank – Employee/Employer 401K Annual Contributions
- ADP – Payroll Processing

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by WRE. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Wild Rose Jefferson, LLC d/b/a Wild Rose Jefferson (WRJ). Mr. Gilson presented the following contracts for Commission approval:

- Tech Art – Table Peakers
- Edward Don & Company – Kitchen Goods and Chairs
- ABC Electrical Services – Electrical Service
- Doll Distributing – Beverage Distributor
- Holmes Murphy – Insurance
- PepsiCo – Beverage Distributor
- Reinhart Food Services – Food Distributor
- Johnson Brothers of Iowa, Inc. – Beverage Distributor
- The Waldinger Corporation – HVAC Maintenance
- Wellmark Blue Cross Blue Shield – Medical Benefits
- H & F Distributors – Beverage Distributor

- ADP – Payroll Services
- Northwest Bank – Retirement Plan Administrator

Chair Lamberti requested an update on the construction progress and anticipated opening. Mr. Gilson stated the project has reached the point where the construction team has recognized the vision of the architect and are putting it in place. He noted one of the biggest issues delaying the opening of the facility is the installation of the sewer line, which will hopefully occur this month. Mr. Gilson stated they are sticking with the August 1 opening date; how far in advance of that will depend on how fast everything can be pulled together.

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Arnold moved to approve the contracts as submitted by WRJ. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on SCE Partners, LLC d/b/a Hard Rock Hotel & Casino Sioux City (HRH&C). Todd Abbott, Vice President of Regulatory Compliance for Warner Gaming, presented the following contracts for Commission approval:

- MTM Sales Corp. – Promotional Items
- Saturday in the Park, Inc. – Concert in the Park/Annual Festival (RP)
- AJR Equities, Inc. – Promotional Items
- Rymax Marketing Services, Inc. d/b/a Brainstorm Logistics – Promotional Items
- Imagine This – Promotional Items

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by HRH&C. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on HGI-Lakeside, LLC d/b/a Lakeside Hotel Casino (Lakeside). Bob Thursby, General Manager, presented the following contracts for Commission approval:

- Crawford Law Firm – Legal Fees
- Incredible Technologies – Purchase Slot Machines
- King Food Service – Seafood, Poultry and Meat for Use in Buffet

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by Lakeside. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Ameristar Casino Council Bluffs, Inc. d/b/a Ameristar Casino Council Bluffs (Ameristar). Monty Terhune, General Manager, presented the following contracts for Commission approval:

- Inca Supply Corp., LLC – Marketing Give Away and Promotional Items

- The Printer, Inc. – Direct Mail Production
- Brown Winick Graves Gross – Regulatory and Legal Litigation

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contracts as submitted by Ameristar. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Isle of Capri Bettendorf, L.C. d/b/a Isle of Capri Hotel Bettendorf (IOCB). Ms. Tranchina presented the following contracts for Commission approval:

- G&K Services – Rental and Cleaning of Floor Mats, Hotel Sheets and Linens, and Table Linens
- Guest Supply, LLC – Hotel Room Furnishings/Supplies

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by IOCB. Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti called on Harvey's Iowa Management Company, Inc. d/b/a Harrah's Council Bluffs Casino & Hotel (Harrah's). Janae Sternberg, Director of Finance, presented a contract with D & D Construction Services, Inc. for construction services.

Hearing no comments or questions concerning the contract, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contract as submitted by Harrah's. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Iowa West Racing Association d/b/a Horseshoe Casino/Bluffs Run Greyhound Park (HC/BRGP). Ms. Sternberg submitted a contract with Thomas Bus Sales as a vehicle vendor.

Hearing no comments or questions concerning the contract, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the contract as submitted by HC/BRGP. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti called on Prairie Meadows Racetrack & Casino, Inc. d/b/a Prairie Meadows Racetrack & Casino (PMR&C). Gary Palmer, General Manager, presented the following contracts for Commission approval:

- Baker Electric – Electrical Contractor
- Daktronics – Tote Board Replacement
- Novomatic Americas – Gaming Equipment and Supplies
- Shiver-Hattery, Inc. – Engineering Services
- Trans Lux West Corporation – Tote Board Replacement

Hearing no comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by PMR&C. Commissioner Arnold seconded the motion, which carried unanimously.

Following a short recess, Chair Lamberti moved to the Petition for Declaratory Order RE: Chapter 99F and Chapter 17A of the Iowa Code filed by Eugene Kopecky. Tom Flynn, representing the Iowa Gaming Association, filed a Petition for Intervention. Chair Lamberti advised each side would be given ten minutes to present their case, and then Mr. Kopecky would be given five minutes to respond to Mr. Flynn's comments before the floor is opened for questions.

Mr. Kopecky stated he was before the Commission due to a very important issue for Linn County, as well as other counties that do not have casinos. He indicated the question is whether or not cannibalization, the finding used by the Commission to deny a license to Linn County, is a valid criterion. Mr. Kopecky stated he was not a part of the group seeking the casino license when the Commission denied the license application on April 17, 2014, but stated he was interested in seeking a license. He noted the reason stated by the Commission for denying the license was the cannibalization of revenue and profits from existing license holders; taking approximately 20-25% of the revenue from Riverside and approximately 8% from Waterloo. He stated the casinos are located 40-50 miles from Linn County with another county between Linn County and Washington and Black Hawk Counties.

Mr. Kopecky stated that after reading the Commission's decision and reviewing the minutes, he examined Chapter 99F. After reading the law, he realized that counties like Johnson, Story, Dallas, Webster, Muscatine and Henry would not be able to get a license because they would also cannibalize existing license holders to some extent. He pointed out that it did not make any difference whether the applicants were suitable or not; he noted he did not review any documentation and is assuming they were suitable for licensure. Mr. Kopecky stated his point is that in Linn County and many counties in Iowa there can be no gambling until a referendum is held. He stated that once the referendum passes, there is a series of events that take place to determine whether or not gambling will be allowed in the county. Mr. Kopecky stated when the State passed Iowa Code Chapter 99F and other gambling sections, they had the option of opening the state to gaming and the Commission could allow a certain number of licenses, but that was not what happened; nor did they allow counties to opt out. The legislature stated there would be no gambling in any county unless the county approved gambling. He called this "County Option 1". Mr. Kopecky stated the Legislature also indicated there would not be a flat fee for licensing; it would be based on the county population: \$5,000,000 for a population of 15,000 or less, \$10,000,000 if the population is more than 15,000 but less than 100,000, and \$20,000,000 if the population is 100,000 or more. He stated the Legislature believed the county should control their options. Mr. Kopecky stated once the referendum passes, and there is an applicant that believes they are able to operate a casino, they file an application for a license with the Commission, which is required to list the name, residence, date of birth, whether or not the applicant has ever been convicted of a felony, had an addiction to alcohol or controlled substances, a history of mental illness, a picture, fingerprints, a physical description, and then the applicant must go through a DCI background investigation. The applicant must also be of good repute and moral

character before a license can be granted. He believes the criteria listed would exclude the mafia, drug cartels, convicted felons, money launderers and others that would not qualify for a license; however, he feels there are many good people who are suitable and could get a license. Mr. Kopecky stated the criteria that should be used are limited to what is included in Chapter 99F; he also noted the Commission is given a lot of powers under subsection 4, and to adopt rules pursuant to chapter 17A.

Mr. Kopecky stated the second part of his Petition is that the Commission cannot enact a rule that is contrary to Chapter 99F. He provided the following example: The fee for a license in Linn County would be \$20,000,000; the Commission could not enact a rule stating it would be \$25,000,000. Mr. Kopecky stated once the Commission adopts the cannibalization rule there are consequences; it nullifies the vote of the electorate at the county level and gives the power to the regional license holders instead of the county because they are now covering six or seven counties. He stated that since Riverside covers Johnson and Linn counties; there is approximately \$40 million in license fees the State is not collecting because Riverside would be cannibalized. Further, it denies the State of Iowa a significant amount of tax revenues; Linn County would have paid a \$20 million license fee, and the income tax, gambling tax and other fees would have been approximately \$20 million per year, or over a period of ten years, the cannibalization rule would cost the state around \$220 million. He stated the county is losing several million as well. He noted the license denial also cost the county 400 jobs, cost charities a significant amount of income as they do not receive any funds from either Riverside or IOC Waterloo, has had an adverse effect on the city's economic development, and requires county residents to drive between 80 and 100 miles to participate in casino gaming. Mr. Kopecky stated the cannibalization rule also restricts competition in violation of Iowa law regarding the restraint of trade/monopolies. He indicated he understands the State of Iowa can participate in restrictive trade and monopolies if that is what is desired; however, he believes if that was the case, the Legislature would have identified it in Chapter 99F and there is no reflection in Chapter 99F that indicates that was their intent. Mr. Kopecky stated that if an individual is a suitable and qualified applicant, the Commission is saying that person or those persons are not entitled to a license even though the county and Chapter 99F says they are. He further stated the cannibalization rule gives the existing license holders throughout the state authority over the issue of licenses, and takes away the Commission's duties. Mr. Kopecky stated he believes it is the Commission's responsibility to supervise and regulate the license holders pursuant to Chapter 99F rather than support them or take their position and deny competition. He noted there is nothing in the statute that indicates the Commission should favor one county over another, using the vote in Linn County as an example, and indicated it is to the detriment of the county. Mr. Kopecky stated the most important part of his petition is the vote. By using the existing license holders' cannibalization as a reason to deny licenses, the county vote is nullified, which is a basic concept of democracy. The public vote is important, and the Linn County referendum passed by approximately 67%. When the Commission denies a license because someone is going to have part of their business cannibalized, the referendum is being voided. Mr. Kopecky stated the Commission's answer to the question of whether or not they can use the existence of a gambling license in one county, or the impact on an existing license, when considering whether or not to issue a license in another county should be no.

Mr. Kopecky stated the second question set forth in his Petition for Declaratory Order has to do with the administrative rules, and are authorized by Iowa Code Chapter 17A. He referenced cases that were heard by the Iowa Supreme Court regarding statutory construction; in *State v. Nicolette*, the Court indicated it is not the province of the Court to speculate about probable legislative intent without regard to the wording of the statute, and any determination must be based upon the what the legislature actually said rather than on what it might have said or should have said. Policy arguments to amend statutes must be directed to the legislature. These principles are not hyper technical, but rather they are fundamental to the separation of powers and must be applied in a consistent fashion, across all spectrums of cases. Mr. Kopecky stated the Supreme Court Justices also stated, in *Doe v. Iowa Dept. of Human Services*, that they could not extend a statute, expand a statute or change its meaning under the pretext of construction. In *Holland vs. State of Iowa, Insurance Dept. of Iowa*, the Court stated an administrative body may not make law or change the legal meaning of the common law or statutes. For that reason, he believes the gambling license criteria in Chapter 99F does not include the impact on existing license holders in another county and any administrative rule that outlines such criteria is null and void and therefore should not be enforceable.

Chair Lamberti stated he would have several questions, but was going to withhold the majority until the Commission has heard from Mr. Flynn and his rebuttal comments. He noted Mr. Kopecky has presented two questions in the Petition, and is specifically looking at question two which states: "If the IRGC has adopted administrative rules that are contrary to Chapter 99F of the Iowa Code, are those administrative rules null and void?" Chair Lamberti asked which rules, or if there is one in particular Mr. Kopecky was referencing. In reviewing the administrative code, 491-1.7 is titled "Criteria for granting licenses", and further down there is a specific subparagraph that talks about the impact on existing operators' adjusted gross revenue versus existing operators' ratio of adjusted gross revenue to investment. He asked if Mr. Kopecky was referencing that particular subrule, the broader rules, or other rules. Chair Lamberti stated he was trying to determine which rule or rules Mr. Kopecky believes are not consistent with Iowa code. Mr. Kopecky advised the rule Chair Lamberti referenced is the one he is referring to. He stated he didn't know if there were others as he has not examined all of the rules.

Chair Lamberti called on Mr. Flynn. Mr. Flynn stated the Iowa Gaming Association (IGA) disagrees with the arguments advanced and conclusions reached by Mr. Kopecky, particularly as it pertains to the power of 99F.7(11), which is the argument upon which most of Mr. Kopecky's argument is based. The interpretation put forth by Mr. Kopecky is that once the county electorate votes to approve gambling then it is the Commission's role to grant the license subject to the background checks and financing thereby elevating the importance of the county vote above the role of the Commission, and the "county voters decide if casino gambling shall be conducted in their county, not the IRGC." Mr. Flynn stated it is Mr. Kopecky's belief that the journey for a license starts and concludes with the vote of the county; however, the IGA believes the Legislature, as does the Commission, that the journey for a license starts with the passage of the referendum by the county electorate, and the Commission's role is to review various other factors of 99F. Iowa Code Chapter 99F.4 lists many powers granted to the Commission, and starts off stating the Commission shall have full jurisdiction over, and shall supervise, all gambling operations governed by this chapter, and shall adopt rules to implement this chapter.

Subparagraph one states the Commission shall investigate applicants and determine the eligibility of applicants for a license and select among competing applicants the applicant which best serves the interests of the citizens of Iowa. Iowa Code Chapter 99F.7 states the commission shall decide the number, the location and the type of gambling structures licensed under this chapter.

Mr. Flynn noted that while the Commission has been granted broad powers, one power it was not granted was the power to award a license to an applicant from a county that had not authorized gambling in the county. Mr. Kopecky feels this is the ultimate power of the county; when the referendum passes, the county gets a license; however the IGA does not believe that was the intent of the Legislature. The Legislature took the position that the Commission could not force gambling on a county if they don't want it. Before the journey for a license begins, the county voters must say yes; then the other factors of Chapter 99F come into play. Mr. Flynn stated if the Legislature had intended the result Mr. Kopecky seeks, it could have said in the legislation that once a county electorate votes yes in a referendum, the Commission shall grant a license but that is not what they said. The Legislature said the Commission may grant a license. Historically, the Commission has, when reviewing applications, denied some applications, most recently Cedar Rapids, because of the cannibalization effect and other factors that would be adverse to other licensees. Mr. Flynn noted the legislature has witnessed these actions; and if the Legislature thought the Commission had superseded the powers granted by them, it clearly could have advised the Commission they misinterpreted the law, we are going to amend the law and make it clear the Commission does not have the power to deny a license when a county passes a referendum. Mr. Flynn pointed out the Legislature has not taken any action. He advised the only case to reach the Iowa Supreme Court dealing with the denial of a gaming license is the Alfredo case, which started with the preface that it looks at the Legislative intent to grant the Commission broad and vast powers and that it will not overturn the Commission's actions unless they are irrational, illogical, or fully unjustifiable. The Supreme Court found the Commission acted within its powers to deny an application.

Mr. Flynn noted Mr. Kopecky raised the issue that the Commission's actions create monopolies or restraints of trade. He stated the Iowa Competitive Law is clear that regulatory bodies are exempt from the Iowa Competition Law and; therefore, is not applicable in this case.

Mr. Flynn stated if Mr. Kopecky's Petition were approved it is reasonable to assume that many counties in Iowa would be passing referenda and seeking gambling licenses. The Commission's ability to deny those applications would be muted; their ability to condition the granting of an application on the amenities and entertainment component of the license would be diminished; the high quality and high cost of the facilities built by the existing licensees are going to be greatly jeopardized or devastated due to possible competition from many counties and those applicants most likely are not going to be required to build the high quality facilities Iowa currently has, which has made the gaming and entertainment experience so positive. The existing licensees also face the possibility that their lenders are going to get skittish and decide not to renew loans if there are going to be licenses in every county. Mr. Flynn stated that even if Mr. Kopecky were to get his wish and obtain a license in Linn County, all of the surrounding

counties could also apply and receive a license and the success of his project could be questionable.

Mr. Flynn concluded his remarks by stating the Legislature clearly granted the Commission the power to take applications, to establish the criteria, to look at the effect on existing licensees, and has not exceeded its authority. He stated the IGA believes the answers to the questions raised are Yes, the Commission can look at the cannibalization factor, and yes, the Commission can pass rules to implement its power, and that the Commission has not established rules that exceeded its power.

Chair Lamberti called for any questions of Mr. Flynn. Hearing none, he called on Mr. Kopecky for his rebuttal of Mr. Flynn's comments.

Mr. Kopecky stated he would welcome the competition if he had a casino in Linn County. He stated the first power after the referendum is passed is to file an application for a license under 99F.4, which states the Commission is "to investigate the applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa." He feels the above is saying "shall". He stated he has looked at the question of "may", and the Iowa Supreme Court, over the last three years has indicated at least twice in the Sierra case that "may" actually means "shall" in 17A.

Mr. Kopecky questioned where the Commission's responsibilities or duties lie; do they lay with the existing license holders, with the citizens or are they independent of either of them. He feels Linn County voted on the gambling referendum twice and turned it down once. Since that time, significant changes have occurred in the county. A flood six or seven years ago destroyed in excess of 3,500 homes and several hundred businesses; the community is rebuilding at a fast pace. During the rebuilding process, the Board of Supervisors was convinced to put the referendum on the ballot, and county residents approved the measure by 67%. Mr. Kopecky stated there is a significant amount of community support. The proposed location was in the flood rebuilding area. A group of individuals was found who was willing to build and operate the casino; he assumes they were suitable. The Commission then decided none of those things mattered; the most important thing was the impact on Riverside and Washington County – that their profits and revenues were more important than the people that voted on the issue in Linn County. Mr. Kopecky stated that he felt the citizens and residents of the county have to be more important in the process than whether or not a casino is operating at maximum capacity and profit. He feels the citizens should be in front of the pack instead of the back.

Chair Lamberti stated Mr. Kopecky had addressed one of his questions pertaining to 99F.7(11) which was if the Legislature had chosen to use the word "shall" instead of "may". He stated that Mr. Kopecky's position is that if the county approves a referendum they are entitled to a license. Chair Lamberti asked him to contrast that to the argument set forth by Mr. Flynn that the referendum is simply the initial step to insure that the Legislature put a safe guard in place to insure that a county could not have gambling forced upon them as opposed to the referendum being a mandate for the Commission to issue a license.

Mr. Kopecky stated the Commission should not issue a license in a county after the referendum if there is no one suitable to operate the facility. He stated 99F starts out saying if the referendum is passed then all of the other steps comes into play, so he believes the referendum is the most important item. He stated the people in the county have control because they have the ability to vote casino gambling in, but also have the ability to vote it out. Mr. Kopecky stated that all of the power of whether or not there is going to be a casino in a county lies with the voters, and it is up to the Commission to determine who is going to be there and where and regulate them, but don't have that authority until a county passes a referendum.

Chair Lamberti clarified that he heard Mr. Kopecky concede that if a referendum was approved in a county but there was no suitable operator, they would not be entitled to a license. Mr. Kopecky answered in the affirmative.

Mr. Ohorilko advised Mr. Kopecky the Commission did receive the documents he had submitted for Commission review.

Hearing no further questions for Mr. Kopecky or Mr. Flynn, Chair Lamberti moved to go into Executive Session pursuant to, but not limited to, Iowa Code Sections 21.5(1)c and f for the purpose of discussing strategy with counsel and discussing the decision to be rendered in a case conducted according to the provisions of chapter 17A. Commissioner Kramer seconded the motion, which carried unanimously on a roll call vote.

Upon reconvening in open session, Chair Lamberti, based upon the information submitted and discussions, moved to answer the questions presented in the Petition for Declaratory Order as follows:

Question One: Whether or not the IRGC can use the existence of a gambling license in one county, or the impact on an existing gambling license in one Iowa county, when considering whether or not to issue a gambling license in another (different) Iowa county?

The motion would be that the Commission answers in the affirmative, based upon the authority granted to the Commission pursuant to Iowa laws set forth in Chapter 99F and the administrative rules that the Commission can use the existence of a gambling license in one county or the impact in making a decision on a gambling license in another county.

Chair Lamberti stated the motion would then move to the second question which is:

If the IRGC has adopted administrative rules that are contrary to Chapter 99F of the Iowa Code, are those administrative rules null and void?

Chair Lamberti stated that while the Commission believes the rules are consistent with Iowa law, the answer is that the determination of whether or not a rule adopted by the Commission is inconsistent with Iowa law, it is not for the Commission to make that determination, but for another body, specifically the courts, to make that determination.

Chair Lamberti stated that would be his motion with respect to the two questions. He further moved that the Attorney General's Office prepare an order in accordance with the motion for review and action by the Commission at a later date.

Commissioner Kramer seconded the motion, which carried unanimously.

Chair Lamberti moved to Public Comment. Gail Shook, a greyhound owner from Council Bluffs, noted the Commission was holding a meeting on July 29th to discuss the proposed rules regarding the payout of the greyhound cessation fund, but a memo from IRGC received in April advised the Commission would be determining the rulemaking process at the June Commission meeting. She asked if that process has been determined.

Mr. Ohorilko advised the first step in the rulemaking process was the Notice of Intended Action that was approved earlier in the meeting. He noted the Commission included the informal rules when the memo was sent out in April. The meeting on July 29th will be the public hearing for the greyhound rules. The hearing presents an additional opportunity for individuals to present additional comments or letters specifically addressing the rules. Mr. Ohorilko advised any written comments or letters should be submitted to the Commission by July 29th.

Ms. Shook asked if individuals would be able to speak at the July 29th meeting, and if they would be required to get on the agenda. Chair Lamberti advised the meeting is a public hearing. There will be a process established for individuals to sign up to speak, but everyone who signs up to speak will be given an opportunity to do so. Ms. Shook asked if there is a format the individuals would need to follow. Chair Lamberti stated, depending on the number of individuals signing up to speak, they will have 3-5 minutes to address the Commission. Additional comments can also be submitted in writing.

Ms. Shook stated she submitted comments when they were requested the first time, but would be submitting additional comments and asked the date by which they needed to be submitted. Mr. Ohorilko stated she would need to submit a separate letter for the formal rules, and those needed to be submitted by the public hearing. He advised she could bring it to the hearing if she desired.

Chair Lamberti stated the Commission did seek informal comments, which led to some changes in the proposed rules sent out in April, but the rules approved today are in their final format.

As there was no further Public Comment, Chair Lamberti moved to Administrative Business and called on Mr. Ohorilko to discuss the regulatory fees for Fiscal Year 2016. He stated the fees have been sent to all stakeholders, but noted budgets have not been officially established at this time. The fees sent out were based on what IRGC staff believes will be the result of the budget bill. He noted if there were any material changes, the fees would be brought back before the Commission for approval. He advised staff had not received any comments from the stakeholders regarding the fees, and requested approval of the fees as submitted.

Hearing no comments or questions concerning the proposed fees, Chair Lamberti requested a motion. Commissioner Kramer moved to approve the regulatory fees for Fiscal Year 2016 as submitted. Commissioner Heinrich seconded the motion, which carried unanimously.

Chair Lamberti moved to the update on gaming legislation. Mr. Ohorilko advised there were two laws that were passed in the recent legislative session. One piece of legislation requires IRGC to conduct a study on exchange wagering as a form of pari-mutuel wagering, which is due to the General Assembly by December 1st. He advised staff has started working on the study, and would be reaching out to some of the stakeholders involved with pari-mutuel wagering.

The second law passed modified the penalties for individuals caught placing or changing a bet that would alter the outcome of the game. Previously, the individual would have been charged with a felony but many county prosecutors were reluctant to do so if the dollar value was not substantial. Mr. Ohorilko advised the new law incorporates steps, and provided the following example: A bet for under \$200 changed after obtaining knowledge of the outcome of the game would be a simple misdemeanor but the charges would escalate depending upon the value of the alleged incident.

Hearing no comments or questions for Mr. Ohorilko concerning the new laws, Chair Lamberti requested a motion to adjourn. Commissioner Heinrich so moved. Commissioner Kramer seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

JULIE D. HERRICK